IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3590 OF 2007

IN

CHAMBER SUMMONS NO. 794 OF 2004

IN

L.C. SUIT NO. 2540 OF 2004

Loknath Mahadeo Soni aged about 65 years, Hindu Adult, Indian Inhabitant of Mumbai, residing at Room No. 2, Pandey Chawl, Near Durga Mandir Lane, Khairani Road, Sakinaka, Mumbai - 400 072	]]]]]]]	Petitioner (Ori. Plaintiff)

Vs.

Municipal Corporation for Greater Bombay, a body Corporate under B.M.C. Act 1889, having its office at Mahapalika Bldg., Mahapalika Marg, Fort, Mumbai - 400 001.	]]]]]]	Respondent (Ori. Defendant)

Mr. A.P. Mishra i/b M/s K.R. Tiwari & Co. for the Petitioner.

Mr. A.J. Bhor for the Respondent

CORAM : A.S. OKA, J.
DATE : 9TH JULY, 2007

JUDGMENT

1) Rule.

2) Learned Advocate for the Respondent waives

service.

3) Considering the facts and circumstances of the case, the Petition is taken up for final hearing at the stage of admission.

4) The Petitioner is the original plaintiff who has filed a suit for declaration that the notice issued under Section 314 of the Bombay Municipal Corporation Act, 1888 in respect of the suit structure was null and void and bad in law. He prayed for perpetual injunction restraining the Respondent from demolishing the suit structure.

5) In the pending suit, the Petitioner filed a chamber summons for amendment of the plaint. A prayer was made in the chamber summons for permitting amendment of the plaint for correcting the area of the suit structure on the basis of alleged Memorandum of Understanding dated 25th July 2002. The said chamber summons was opposed by the Respondent-Corporation. The learned Trial Judge, by the impugned order dated 9th February 2007 dismissed the chamber summons. The learned Trial Judge observed that the proposed amendment will change the nature of the averments made in the original plaint.

6) I have heard the submissions of learned Advocates appearing for the parties. I have also perused the text of the proposed amendment. In the plaint, it is stated that the area of the suit premises is about 11’ x 28’. By the proposed amendment, the Petitioner wants to contend that the suit premises consists of ground and a mezzanine floor. He wants to contend that the area of the suit premises given in the plaint as 11’ x 28’ is of the ground floor. It is contended that the area of the mezzanine floor is 11’ x 18’. The contention sought to be raised by the Petitioner is that he is in occupation of an area 11’ x 18’ on the ground floor and the remaining portion admeasuring 11’ x 10’ is given by him to his son as mentioned in the Memorandum of Understanding dated 25th July 2002.

7) For rejecting the prayer made in the chamber summons, the learned Trial Judge has given following reasons :

> "Perused the plaint as well as proposed amendment in the schedule appended to the Chamber Summons. In the plaint, the plaintiff has mentioned the area of the suit premises adm. 11’ x 28’. Now the plaintiff intends to mention the are as 11’

> x 18’. Besides that, the Plaintiff intends to add that the area adm 11’ x 10’ on the ground floor is given to his son for carrying business on temporary basis. Now by way of proposed amendment, the Plaintiff intends to withdraw earlier area of suit premises mentioned in the plaint by way of proposed amendment. The proposed amendment would change the nature of averment. It will cause prejudice to the Defendant."

8) By the proposed amendment, the Petitioner was not intending to withdraw any admission in the plaint which was earlier filed. What was sought to be done by the Chamber Summons was to correct the description of the suit premises. It is obvious that the proposed amendment does not change the nature of the suit. Considering the nature of the proposed amendment and the grounds on which the proposed amendment has been rejected, I find that the view taken by the Trial Court is erroneous. The Trial Court ought to have permitted the amendment of the plaint. Hence, the petition must succeed. Hence, I pass following order.

O R D E R

(i) The impugned judgment and order dated 9th February 2007 is quashed and set aside and the Chamber Summons No. 794 of 2004 is made absolute in terms of Prayer clause (a).

(ii) The Petitioner will pay an amount of Rs.3,000/- to the Respondent by way of costs of the Chamber Summons. The amount of costs shall be either deposited with the Trial Court or paid directly to the Respondent- Corporation within a period of eight weeks from today.

(iii) It is obvious that after the amendment is carried out, the Respondent- Corporation is entitled to file additional written statement.

(iv) Rule is made absolute in above terms.

(A.S. OKA, J.)